HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1545 of 2007

Date of decision : 23.03.2007

N.S.Rooprai **.....Petitioner**

versus

Baldev Singh **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.K.Gautam, Advocate for the petitioner.

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order of ejectment passed by the learned Rent Controller against the petitioner on account of bonafide requirement of the premises in dispute of the landlord.

The landlord sought voluntary requirement from his assignment with State Bank of India, Chandigarh, in the month of March, 2001. Thereafter, the landlord sought ejectment of the tenant from the tenanted premises i.e. first floor consisting of two bed rooms, one store, one kitchen and one bath room, by initiating proceedings under Section 13-A of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as the Act), providing summary eviction of the tenant by a specific landlord.

It is the case of the landlord that the premises consists of two bed rooms on ground floor and two bed rooms on the first floor. There is another tenant on the second floor against whom the landlord has already

initiated eviction proceedings. Admittedly, during the pendency of the present eviction petition, the second floor was got vacated and is in occupation of the landlord. The landlord has pleaded that the premises are required for the use of his visiting son and daughter in-law who are residing in Canada and visiting daughter and her family. It was also pointed out that the grand children of the landlord are studying in Chandigarh and the accommodation is required for their use as well.

After considering the evidence led by the parties, the learned Rent Controller framed an opinion that the landlord is being visited by his daughter, son-in-law. One of his grand child is studying at Chandigarh and whenever his son and daughter in-law visit from Canada, they stay with him, therefore, the four rooms are the bonafide required for use and occupation of the landlord and his family members. It is the case of the landlord that one of the room at ground floor is being used as *`Puja Room'* i.e. where *'Shri Guru Granth Sahib'* is recited.

Learned counsel for the petitioner has vehemently argued that the requirement pleaded is that there is additional accommodation which does not fall within the meaning of Section 13-A of the Act. Reliance is placed upon the judgments reported as "***J.C.Uppal versus S.K.Malhotra, 1990 (2) R.C.R. (Rent) 60", "Bharat Bhushan and another versus Dr.K.K.Saini and others, 2005 (1) RCR-565"*** and ***"Surjan Singh versus Krishan Lal Garg, 1996 (1) RCR-610".*** However, the judgments in J.C.Uppal's case and Surjan Singh's case (supra), cannot be said to be relevant after the decision of the Hon'ble Supreme Court of India in "***Zenobia Bhanot versus P.K.Vasudeva and others, 1995 (6) S.C.C.-***

770", wherein it has been held that the sufficiency of the accommodation is not required to be examined while considering the application under Section 13-A of the Act, wherein it is held in the following effect:-

> "If such residential building is let out in parts, the landlord is given the option to recover immediately the possession of such residential building itself or any part or parts of such building, in cases where it is let out in part or parts. In cases where the building is let out in parts, the parts so let out, will form part of the building itself. All that the second proviso provides is that the said right shall not enable the landlord to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof, if the building is let out in part or parts. There are no words in Section 13-A of the Act to import the idea that if a residential building is let out in parts, each part will become a residential building thereby fettering the "specified landlord" to avail the concession only from a part. Section 13-A, which gives a special right to the landlord, is to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. In interpreting the section, it is a far-cry to state that the question as to whether the accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not, is not to be gone into in such proceedings. The right is given to the landlord, in case where he does not own or possess any other suitable accommodation to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered, since the part or parts let

out, form part of the building."

In *Bharat Bhushan's* case (supra), the Court has seized of the matter where the leave to defend was declined. The Court has maintained the said order in revision. Reliance of the petitioner on last lines of para No.14 is misconceived as the Hon'ble Supreme Court has dealt with in extenso, right of the landlord to seek eviction from a tenant when the landlord is already in occupation of a part of residential building.

Learned counsel for the petitioner then contended that son of the landlord has not visited Chandigarh for the last 4 years and that wife of the landlord has since died, therefore, the requirement of the accommodation has undergone due to subsequent developments. The mere fact that son of the landlord has not visited Chandigarh cannot be a ground to doubt the bonafide of the landlord. Admittedly, the grand son of the landlord, who is the son of his son residing in Canada, is studying in Chandigarh and living with his grand father. Such fact is relevant to hold that the need of the landlord is bonafide in seeking eviction. Unfortunate death of the wife of the landlord is hardly relevant for eviction as the need is required to be examined at the time of filing the petition. In fact, with the death of wife, the landlord can expect his children to stay for larger period with him.

Learned counsel for the petitioner has vehemently argued that the landlord has sought voluntary retirement is an excuse to seek ejectment of the tenant-petitioner under Section 13-A of the Act. However, the said argument of the learned counsel for the petitioner is of no help to the petitioner. As per the case of the landlord, he was 59 years

of age when he sought voluntary retirement. Learned counsel for the petitioner states that normal age of retirement was 60 years. Therefore, the voluntary requirement sought a year before the normal age of retirement cannot be treated as an excuse to seek ejectment of the tenant.

In view of the above, I do not find any illegality or irregularity in the ejectment order passed by the learned Rent Controller, which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition stands dismissed.

However, the order of ejectment shall not be executed for 2 months from today.

(HEMANT GUPTA)
JUDGE

March 23, 2007
**mohinder*